THE CORPORATION JOURNAL

(REGISTERED U. S. PAT. OFFICE)

VOL. XVIII, No. 2 NOVEMBER, 1947 PAGES 21-40

COMPLETE NUMBER 339

Published by

THE CORPORATION TRUST COMPANY AND ASSOCIATED COMPANIES

In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, C T Corporation System and associated companies deal with and act for lawyers exclusively.

"DIRTY POOL!"

the president cried!

BUT was it? Not really, but we'll admit the whole affair unfortunate, for we can understand the helpless rage and befuddlement of Mr. President in suddenly finding his company saddled with a judgment by default. "Not even a chance to defend ourselves," he kept repeating.

Mr. President, you could have been there on court day if your officials had considered statutory representation more important than an extra-curricular activity of some business employe. What happened? Service of process came and your employe, as designated representative, didn't recognize its importance—put it aside to handle later. He did, later, but *too late.* Your company failed to represent itself on court day—and lost by default. All cut and dried.

You should have heeded your lawyer's advice, Mr. President. Didn't he say, "Place your statutory representation in competent, experienced hands — with an organization that makes it a full-time business, such as Corporation Trust"?

Why not now, Mr. President? It's simple, safe and inexpensive.

Some Possible Limitations Upon Municipal Taxation of Corporate Net Income

The levy of net income taxes by several cities during the past few years has brought into focus the question as to how far municipalities, generally, may go in imposing such income taxes upon those within their corporate confines whose activities there are limited in scope or are restricted to the furtherance of interstate or foreign commerce.

The only city which imposes income taxes upon the net income of corporations today is Toledo, Ohio. The St. Louis, Missouri, income or earnings tax was recently held invalid. New York City has imposed a gross receipts tax since 1934. That city enacted legislation in 1934 to exact an income tax for the privilege of carrying on business within the city during the calendar year 1935, but the legislation was repealed before it was to become operative.

The texts of ordinances of this type ordinarily shed little light upon the question whether corporations with limited activities within the taxing city are subject to the tax. Nor do regulations aid to any extent. And few decisions have been rendered relating to such city income taxes. As a result, counsel frequently has recourse to state and federal court decisions on comparable situations involving state income tax requirements, the state licensing of foreign corporations as such and to decisions in connection with city licensing provisions generally, giving weight to such decisions to the extent they may have a bearing upon similar city levies.

Preliminary Acts. Activities which may be regarded in the light of being preliminary to the doing of business within a state have been held not to bring companies within the licensing or taxing jurisdiction under circumstances as follows: Sending an agent to investigate whether it would be advisable to engage in business there (68 F. 2d 707); sending an agent to furnish prospective customers with printed forms of contracts, to be forwarded, after execution, to another state, coupled with the examining of public records by the agent and investigating the financial status of prospective customers (26 So. 2d 207); submitting a bid (240 Ill. App. 80; 36 N. D. 570; 176 Mo. 149; 69 Kan. 1); signing a contract (238 N. Y. 623); entering into a lease (218 Ala. 245; 293 Fed. 315; 192 Fed. 119) maintaining a bank account (155 N. Y. S. 651; 42 Okla. 79; 229 N. Y. 502); engaging in a single isolated transaction requiring only a brief period of time for its consummation (113 U. S. 727; 91 P. 2d 613; 12 N. E. 2d 333; 30 P. 2d 140; 166 S. W. 2d 807).

Interstate Commerce. In the following decisions furtherance of interstate commerce was regarded

as not "doing business" for tax or licensing purposes, where orders solicited were filled by shipments from outside the jurisdiction: Drummer solicitation of orders, which was not regular, continuous and persistent (66 S. Ct. 986); sales effected by sample (68 P. 2d 834; 246 U. S. 147; 311 U. S. 454; 156 Ga. 789; 100 Fla. 1537); delivery by means of seller's trucks (235 Ala. 23); maintenance of local office (268 U. S. 203). Liability was ruled to exist for payment of a state income tax, however, where salesmen operated from offices in the taxing state, soliciting orders in interstate commerce where title was retained pending conditional sale payments and collections and adjustment of complaints were also effected locally (166 P. 2d 861, affirmed 66 S. Ct. 1378, rehearing denied, 67 S. Ct. 35).

Foreign Commerce. Among the comparatively few decisions involving foreign commerce and liability to tax or licensing provisions, there are three in which city taxes were ruled not applicable to corporations engaged in furthering foreign commerce within the cities: one involving a city license tax upon the business of a steamship agent (264 U. S. 150), one involving the business of stevedoring for interstate and foreign commerce (67 S. Ct. 815), and one relating to a city gross receipts tax of a corporation which was a soliciting agent for freight and passenger business and the receipt and transmission of money (293 N. Y. S. 613). The same result has been reached in decisions involving taxes imposed by state law (245 U. S. 292; 288 U. S. 218).

Taxable Local Business. There can perhaps be little or no question as to the jurisdiction of a city to tax where the following activities take place there: The maintenance of a local stock of goods, from which deliveries are made to local customers upon receipt of their orders (183 S. W. 523; 313 U. S. 117; 246 U. S. 147); the sending of agents into the jurisdiction to perform services for others there (156 S. W. 2d 250; 64 S. Ct. 967; 205 S. W. 619; 86 F. 2d 394); the engaging in manufacturing within the city (27 So. 2d 788; 250 U. S. 459); the sending of "specialty salesmen" into the jurisdiction to further the purchase of the corporation's products through local dealers, who fill the orders procured by the salesmen (246 U. S. 17; 100 So. 83; 98 So. 787); the installation by the seller of machinery, etc., shipped into the jurisdiction in interstate commerce, where no unusual skill is required to be exercised by the seller in the installation (233 U. S. 16; 136 Ark. 52; 161 N. W. 215; 205 S. W. 619; 269 S. W. 706; 209 S. W. 189; 300 S. W. 91; 211 Fed. 453).

Domestic Corporations

Delaware.

Stockholder prevails in effort to have his proposed by-law changes submitted by management at stockholders' annual meeting. A stockholder, owner of record of 17 out of approximately 9,935,000 shares of the $2 par value capital stock of appellant Delaware corporation, registered with the Securities and Exchange Commission and listed on national security exchanges, had met with a refusal to his written demand to the corporation's management in which he submitted proposals which he desired to present for action by the shareholders at the next annual stockholders' meeting. These were: (1) To amend the by-laws to provide for election by stockholders of independent public auditors to examine the books of the corporation; (2) To change the by-laws so that the corporation could not bar consideration of stockholders' proposals by refraining from giving notice of them in announcements of annual meetings; (3) To require the corporation to send a report of the annual meeting proceedings to all stockholders. The Securities and Exchange Commission entered the suit to effectuate these demands, backing the stockholder. The United States Circuit Court of Appeals, Third Circuit, ruled in favor of the stockholder, holding that the corporation was required to submit the proposals to the stockholders for determination. *Securities and Exchange Commission v. Transamerica Corporation et al.*, United States Circuit Court of Appeals, Third Circuit, September 15, 1947. Commerce Clearing House Court Decisions Requisition No. 378663.

New York.

By-law provision, requiring offers to corporation first and then to stockholders, before sale of stock of company could be valid, found by court to be abandoned and inoperative and complaint seeking by-law's enforcement dismissed. Plaintiff stockholder sought to enforce a by-law of his company providing that "no transfer of stock shall be made on the books of the company, and no sale or assignment thereof shall be valid, unless such stock shall have first been offered to the corporation, and second to the stockholders of this corporation, if the corporation shall fail, neglect or refuse to purchase the same, subject to the condition that the corporation might acquire any part of said offering before any of said stock should be offered to the stockholders." The sale in dispute had been effected without compliance with this by-law provision and over plaintiff's protest. The basal defenses were that the by-law had been regarded and treated by the stockholders as inoperative, abandoned and abrogated; that there had been sales and transfers without compliance with it with the acquiescence of the stockholders and that never before in the history of the company had any objection been made other than that by the plaintiff involved in this suit. Upon consideration of the evidence, the New York Supreme Court, Special

Term, New York County, reached the conclusion and found, as a fact, that the by-law was treated, considered and regarded by the stockholders as inoperative, abandoned and abrogated, observing: "The rule is recognized that stockholders may by consent or by acts and conduct repeal or accomplish the modification or abrogation of a by-law, as fully and effectively as if done by them by formal action, and the by-law is deemed to have been repealed or modified, as the case may be; likewise, non-usage of a by-law, continuing for a considerable length of time, and acquiesced therein, will work its abrogation." Judgment was rendered for the defendants, dismissing the complaint, upon the merits. *Pomeroy v. Westaway et al.*, 70 N. Y. S. 2d 449. Curtis, Mallet-Prevost, Colt & Mosle (Hamilton Hicks, of counsel), of New York City, for plaintiff. Davies, Auerbach, Cornell & Hardy (Lamar Hardy and John W. Burke, Jr., of counsel), of New York City, for defendants Westaway and others. White & Case (Thomas Kiernan, of counsel), of New York City, for defendants Hanover Bank & Trust Co. et al. Reid & Priest (James S. Regan, of counsel), of New York City, for defendants Smith and others. McCanliss & Early (Robert S. Buttles, of counsel), of New York City, for defendants Braman.

In proceeding to set aside alleged unlawful ouster of petitioner as director, president and employee, where answering papers presented an issue as to whether removal was for cause, State Supreme Court rules Sec. 25, G. C. L., was not properly invoked and that action on an existing stockholders' agreement was remedy. A claim was made by the petitioner that his removal as a director and president and his discharge as an employee violated the provisions of a stockholders' agreement between himself and the other two stockholders of the company. The New York Supreme Court, Special Term, New York County, Part I, remarked: "Although a provision in such an agreement that all the stockholders will continue to vote for themselves as directors is legal, a provision for the continuance of specified persons as officers and employees is valid only if such persons remain faithful and efficient and are not guilty of acts or omissions which would constitute good cause for their removal or discharge. The answering papers on the present motion present an issue as to whether petitioner's removal was for cause. The by-laws of the company expressly authorize the removal of *directors* either with or without cause. *Officers* may similarly be removed at the pleasure of the directors and without cause under the express provisions of Section 60 of the Stock Corporation Law in the absence of a valid contract that they are not to be removed except for cause. *Matter of Buckley*, 183 Misc. 189, 191, 192, 50 N. Y. S. 2d 54, 58. In the circumstances no proper case for invoking Section 25 of the General Corporation Law appears to be presented. Petitioner's only valid claim, if any, is contractual in nature. His remedy appears to be the institution of a plenary action for specific performance of the provisions of the stockholders' agreement. That was the remedy invoked in cases such as *McQuade v. Stoneham*, 263 N. Y. 323, 189

N. E. 234, and *Clark v. Dodge,* 269 N. Y. 410, 199 N. E. 641." *In re Roosevelt Leather Hand Bag Co., Inc.,* 68 N. Y. S. 2d 735. Henry K. Chapman of New York City, for petitioner. Benjamin Lebenbaum of New York City, for respondent.

North Carolina.

Contract for sale of sole real estate owned by real estate company and not occupied by it, ruled a part of its stock in trade, which did not require approval of two-thirds vote of stockholders for conveyance of the property. Plaintiff sought specific performance of a contract for the purchase and sale of a building and lot owned by defendant North Carolina corporation but not occupied by it. Defendant corporation contended there was a want of authority on the part of its secretary to make a contract for the sale of the property in question, inasmuch as it constituted the entire property of the corporation and it could only be conveyed on approval by a two-thirds vote of its stockholders, which the record did not disclose to have been given, G. S. Sec. 55-26, subd. 11. The Supreme Court of North Carolina concluded that this section had no application to the contemplated sale, as the building was part of the corporation's "stock in trade," emphasizing that the company had general power to buy and sell real estate as its regular business, and that a specific mention of this particular building in its charter did not exempt it from this general power or segregate it from property generally acquired. It noted that defendant occupied no part of the building, that it was not used for a permanent office, home or other facility in carrying on business in which it was engaged or might engage. Plaintiff was regarded as having dealt directly with responsible officers of the company and it was concluded that, from the evidence, there was, under the agency doctrine, an inference of authority to make a binding contract not negatived by anything in the plaintiff's evidence, and that the evidence ought to have been submitted to the jury. A judgment of nonsuit was, therefore, reversed. *Tuttle v. Junior Bldg. Corporation,* 41 S. E. 2d 365. P. W. Glidewell, Sr., of Reidsville and A. C. Davis of Greensboro, for plaintiff-appellant. R. J. Scott of Danbury and Fred Folger of Mount Airy, for defendant-appellee.

Pennsylvania.

Provisions of by-laws restricting sale of stock, disregarded by company and its shareholders from time of adoption of by-laws, ruled waived so as to prevent certain shareholders from insisting upon their enforcement. Plaintiffs were three stockholders and defendants were the remaining six of a total of nine stockholders of a Pennsylvania company organized in 1918. The plaintiffs sued to set aside purchases of stock made in 1943 by two of the defendants from a stockholder named Detwiler, plaintiffs contending that the by-laws of the company guaranteed to them the right to participate

in the purchase of the stock Detwiler desired to sell and that they had been deprived of the right. The by-laws, as amended in 1919 and as standing until repealed in 1944, contained provisions restricting sale of shares held and affording an opportunity first for purchase by existing stockholders. Defendants pleaded, however, that the by-laws were not effective, that they had been suspended or abrogated by the company's and the stockholders' disregard of their provisions in every transfer of stock made since the company's organization. The lower court found the facts in accord with defendants' contentions and dismissed the bill. This decree was affirmed on appeal by the Supreme Court of Pennsylvania, which observed that it did not regard provisions in the by-laws for their alteration or amendment as "intended to exclude the right of all the stockholders to waive provisions of the by-laws made for their benefit." The higher court reviewed the evidence and found it to support the conclusion that there had been such waiver through a complete failure of the company and its stockholders to observe the by-laws from 1919 to 1944. *Elliott et al. v. Lindquist et al.*, 52 A. 2d 180. Edw. J. I. Gannon and Hazlett, Gannon & Walter of Pittsburgh, for appellants. William H. Eckert, Edward H. Schoyer and Smith, Buchanan & Ingersoll of Pittsburgh, for named stockholders. James H. Gray and James D. Gray of Pittsburgh, for others.

Virginia.

Stockholders, dissenting to merger, not made defendants to suit by corporation for appraisal of stock until after judgment against original defendants, ruled not bound by appraisal of stock of original defendants and held entitled to independent appraisal of their stock. In *Adams et al. v. United States Distributing Corporation et al.*, 34 S. E. 2d 244, (The Corporation Journal, November, 1945, page 26), certiorari denied, 66 S. Ct. 807, 327 U. S. 788, the Supreme Court of Appeals of Virginia held that the statutory remedy of appraisal available to preferred stockholders dissenting to a merger, where cumulative dividends were unpaid, was the sole remedy and ordered the bill of complaint dismissed "without prejudice to the appellants to pursue, in the proper court, their remedy for the fair cash value of their stock pursuant to the provisions of Code, Sec. 3822, as amended." In the instant case, involving the same merger, one of the constituent companies, a Delaware company, proceeded in the Chancery Court under Sec. 3822, as amended, for the appraisal of stock of the stockholders dissenting to the merger and sought the surrender of their stock, after its value was fixed, on payment of that value. The defendant stockholders opposed a motion to this effect, tendering their petition for an independent appraisal. The Chancery Court rendered a decree adverse to the defendants and they appealed to the Supreme Court of Appeals of Virginia. That court noted that the appellants in the present proceeding had not been served with process before entry of the judgment, but that subsequently the corporation had secured an order for publication and service upon them.

It also observed that it had been cited to no authority nor had it "been able to find any to support the contention that a suit, commenced and conducted as an action in personam against certain named parties, can be converted into a class suit after the entry of a judgment therein." The court concluded that the lower court erred in holding that the appellants were bound by that court's decree and not entitled to an appraisal of the fair value of their stock. It ruled that appellants' petition for the appointment of appraisers to make an independent appraisal, apart from the appraisal made in the Chancery Court proceeding in connection with the stock of the parties to that suit, before judgment, should have been allowed. *O'Hara et al. v. Pittson Co.*, 42 S. E. 2d 269. John J. Wicker, Jr. of Richmond and Seymour M. Heilbron, George M. Jaffin and Chas. Winkelman of New York City, for appellants. E. Grayson Dashiell and William W. Crump of Richmond and James V. Hayes, Paul J. Quinn and Donovan, Leisure, Newton, Lumbard & Irvine of New York City, for appellee.

Foreign Corporations

Colorado.

Foreign corporation merely holding directors' meetings in state ruled not doing business for purposes of service of process. Defendant Wyoming corporation appeared specially and moved to set aside service of process upon it. Upon a showing that its only activities in Colorado were limited to the holding of directors' meetings, pertaining to the internal affairs of the company, no business having been transacted there with third parties, the lower court had found that the company was not engaged in carrying on business in Colorado. This judgment was affirmed by the Colorado Supreme Court. *Rogers et al. v. Mountain States Royalties, Inc.*,* 182 P. 2d 142. W. David McClain and Edwin A. Williams, of Denver, for plaintiffs in error. Simon & Lee and M. O. Shivers, Jr., of Englewood, for defendants in error. Commerce Clearing House Court Decisions Requisition No. 374178.

* The full text of this opinion is printed in the **State Tax Reporter**, Colorado, page 507.

Missouri.

Unlicensed foreign corporation, operating in interstate commerce through local manufacturers' agents, ruled doing business so as to be subject to service of process. Defendant Massachusetts corporation, not licensed in Missouri, sought to quash service of process made upon it. Plaintiffs were manufacturers' agents who had represented defendant for many years in Missouri and surrounding states, taking orders for defendant's products on a commission basis, the orders being filled by shipments into Missouri and other states in interstate commerce. Plaintiffs, who represented other manufactur-

LISTEN to those GROAN

And no wonder—the XYZ Company staff has just had of t upsetting rush jobs slammed at it, *a special stockholders'* mtg—s holders' lists to prepare, notices and proxie forms to w print mail—then the task of tabulating returned proxies, making nger for the meeting—and so on. That's so often the headache comp acting as their own transfer agency.

Rushing through a job like this disturbs office routine, req extra help—usually corralled from other departments. Th eans perienced help, carelessness and mistakes. And mistakes ce cos this business. Neither is it fair for stockholders to receiv or se and slipshod protection of their interests.

Employe groans can change to cheers and stockholders get the tection and peace of mind they deserve if companies like YZ w only switch to Corporation Trust, for C T is one organiza co ously keyed to meeting out-of-the-blue demands. It has a thoro trained and long experienced in details—completely equip too, every modern time-saving, mistake-preventing facility. The hot rus creates hardly a ripple at C T. The costs? They're modest. Inv ate t

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ers also in the wholesale trade in Missouri and the Missouri area, sought to recover an unpaid balance of commissions due them. The evidence indicated defendant's name was on plaintiffs' office door and in the building, telephone and post office directories and that it appeared, with defendant's knowledge, on letterheads used by plaintiffs; also, that plaintiffs adjusted complaints and collected accounts in Missouri and that defendant had had two missionary men in Missouri who were not permitted to take orders, but who endeavored to further the use of defendant's products. The Missouri Supreme Court concluded that defendant was doing business in the state to the extent of making it amenable to the process served upon it, basing its ruling principally upon the rule laid down by the Supreme Court of the United States in the case of *International Shoe Co. v. State of Washington*, 326 U. S. 310, 66 S. Ct. 154, (The Corporation Journal, May, 1945, page 352 and February, 1946, page 83), where "continuous and systematic" activities within a state by an unlicensed foreign corporation were found sufficient to uphold service of process. *Wooster et al. v. Trimont Manufacturing Co.*,* 203 S. W. 2d 411. Francis R. Stout and Richard M. Stout of St. Louis, for appellants. Burnett, Stern & Liberman and Robert Burnett of St. Louis, for respondent. Commerce Clearing House Court Decisions Requisition No. 374931.

* The full text of this opinion is printed in the **State Tax Reporter, Missouri**, page 205.

Pennsylvania.

Service of process upheld where many local activities were carried on, including maintenance of local stock and collection of accounts. Defendant Ohio corporation, not licensed in Pennsylvania, sought to have service of process upon it set aside, under circumstances substantially as follows: It was engaged in the manufacture and sale of optical lenses and optical machinery, with its manufacturing plant and home office located at Columbus, Ohio. Plaintiff, who brought this action to recover compensation alleged to be due under a written agreement, had formerly been a territorial sales representative of defendant, occupying two rooms in a Philadelphia office building, with defendant's name alone on the entrance door, as well as in the office and telephone directories. Defendant paid the rent and the salary of a telephone operator, who was made secretary and office manager. When "rush orders" were to be filled, they were filled from a stock kept on hand at the office and payments for orders secured were either sent to Ohio or given to plaintiff and forwarded. Plaintiff, as sales representative, performed many duties in addition to solicitation of orders, estimating and attending to the delivery of machinery, including inquiries and complaints, disposing of lenses from his office to customers serviced by him, these sales being invoiced by his office direct to the customer. He also assisted in the collection of overdue accounts and handled the corporation's advertising. The Supreme Court of Pennsylvania affirmed an order

of the lower court which upheld the service. *New v. Robinson-Houchin Optical Co.*,* 53 A. 2d 79. Joseph W. Henderson and Harrison G. Kildare of Philadelphia, for appellant. Herbert Mayers of Philadelphia, for appellee.

* The full text of this opinion is printed in the **State Tax Reporter**, Pennsylvania, page 10,120.

Virginia.

Bringing of suit in Federal District Court in Virginia by Massachusetts resident against Delaware hotel corporation doing business in Virginia, ruled proper by Circuit Court of Appeals. Plaintiff, a resident of Massachusetts, sued defendant Delaware corporation in a Virginia Federal District Court on a cause of action involving injuries sustained in the course of a fire which damaged a hotel operated by defendant on the Fort Monroe Military Reservation at Old Point Comfort, Virginia, and recovered in the District Court. One of the questions raised on appeal to the United States Circuit Court of Appeals, Fourth Circuit, was whether the venue was proper. The higher court affirmed that it was, finding (1) "The defendant was unquestionably doing business on the Fort Monroe Military Reservation within the Eastern District of Virginia, where the suit was brought. (2) For the purposes of consenting to suit and waiving venue there is no difference between doing business on the Reservation and doing business elsewhere within the Eastern District of Virginia. (3) Under the statute of Virginia, the doing of business within the state amounts to consent to be sued in the courts of the state with respect to causes of action arising out of such business and consent that service of process be made on the Secretary of the Commonwealth of Virginia. (4) Consent to be sued in the courts of the state carries with it consent to be sued in the federal courts within the state if the elements of federal jurisdiction are present. (5) The elements of federal jurisdiction were present in this case, the cause of action arose out of business done within the state, and the consent arising from the doing of business authorized the bringing of this suit in the federal court where the business was done." *Knott Corporation v. Furman*,* United States Circuit Court of Appeals, Fourth Circuit, June 16, 1947. John W. Oast, Jr., and E. L. Ryan, Jr., for appellant. Edward R. Baird, for appellee. Commerce Clearing House Court Decisions Requisition No. 376290; 163 F. 2d 199.

* The full text of this opinion is printed in the **State Tax Reporter**, Virginia, page 327.

Wisconsin.

Federal Circuit Court of Appeals rules that contract of unlicensed corporation was rendered void by statute, both because the execution of the contract itself constituted doing business in Wisconsin and because it related to property in the state. Appellant foreign

corporation sued in the Federal District Court to give force to a contract with appellee Chamber of Commerce, entered into at a time when appellant was not licensed to do business, under which appellant was to open a plant in a Wisconsin city in a building to be rented by appellant, the title to which was to be transferred to appellant after certain events had taken place. Appellant had performed a substantial part of the contract and sought an extension of time to comply, so as to be able, eventually, to have the conveyance of the property to it decreed and to enjoin transfer, meanwhile, to others. Appellant was licensed to do business in Wisconsin subsequent to the time of the filing of the complaint. The District Court had held that the contract constituted a violation of the statute because the contract in itself constituted the transaction of business within the state and because it related to property within the state. The Circuit Court of Appeals, Seventh Circuit, affirmed this judgment, citing Sec. 226.02(1), denying a foreign corporation the right to "transact business or acquire, hold, or dispose of property in this state" until licensed, and Sec. 226.02(9), providing that every contract made by or on behalf of any such foreign corporation, affecting its liability or relating to property within the state, before the corporation is licensed "shall be void on its behalf and on behalf of its assigns, but shall be enforcible against it or them." The higher court also regarded the contract as rendered void by the statute, "both because the execution of the contract itself constituted doing business in Wisconsin, and because it related to property in that it purported to create an interest in property in the state which would ripen into a right of conveyance upon compliance with its terms." *Midwest Sportswear Manufacturing Co. v. Baraboo Chamber of Commerce*,* 161 F. 2d 918. Kenneth P. Grubb and Henry S. Reuss of Milwaukee, Raymond Grossman of Chicago, Ill., and William M. Hayes of Baraboo, Wis., for appellant James H. Hill, Jr., and Robert H. Gollmar of Baraboo and H. H. Thomas and San W. Orr (Thomas, Orr, Isaksen & Werner, of Madison, of counsel), for appellees.

* The full text of this opinion is printed in the State Tax Reporter, Wisconsin, page 504.

Taxation

Maryland.

Maryland retail sales tax ruled valid by Superior Court of Baltimore City. In an action instituted in an endeavor to have the Maryland sales tax law, Chapter 281, Laws of 1947, declared unconstitutional by reason of alleged improper conduct of the Governor in bringing about the enactment of the law, the Superior Court of Baltimore City has rendered an opinion holding the law "constitutional, valid and enforceable." *Pressman v. Lacey, Comptroller et al.*, Superior Court of Baltimore City, September 3, 1947. Hyman A. Pressman, pro se. Hall Hammond, Attorney General and Richard W. Case, Assistant Attorney General, for defendants. Commerce

Clearing House Court Decisions Requisition No. 378447. (Maryland State Tax Reporter, page 6730.)

New Jersey.

Goods, imported from abroad and retained in the original packages, held not subject to local property taxation. The prosecutor, a Delaware corporation, with its principal office in New York City, owned and operated several plants in New Jersey. The case affected an assessment of personal property at a Jersey City plant, the prosecutor company contending there should have been no assessment of that portion of the inventory which was imported from abroad by it and remained in the original packages at all times until in that condition it was sold or distributed in accordance with the directions received from its New York office. The Supreme Court of New Jersey, in ruling in favor of the corporation, said: "It has been established, in this state, that goods imported from a foreign country are not subject to taxation while they remain in the hands of the importer in the original packages." *S. B. Penick & Co. v. Division of Tax Appeals, Department of Tax and Finance,* 52 A. 2d 421. Carpenter, Gilmour & Dwyer and Patrick A. Dwyer of Jersey City, for prosecutor. Charles A. Rooney and Edward M. Malone of Jersey City, for respondents.

Pennsylvania.

Pennsylvania company, leasing its entire assets to a foreign company and having no net income, ruled subject to the capital stock tax, although not engaged in any of the corporate purposes for which it was chartered. Defendant, a Pennsylvania corporation, contended that, as it was not doing business in Pennsylvania, it was not subject to the capital stock tax. It was authorized by its charter to manufacture motor vehicles. Several years prior to 1937, the year in question, it had leased to a foreign corporation all of its land, buildings and other assets held or afterwards acquired, for a rental which was equal to the expenses of maintaining the plant, the taxes thereon and a fair amount to cover depreciation thereof. During 1937 defendant engaged in no other activity within Pennsylvania except to hold title to its plant, machinery and real estate in the Commonwealth, from which it received no net income. The Court of Common Pleas, Dauphin County, held that defendant, a domestic corporation, was liable for the capital stock tax during the year 1937, although it was not engaged in any of the corporate purposes for which it was chartered. *Commonwealth of Pennsylvania v. Mack Bros. Motor Car Company,** Court of Common Pleas, Dauphin County, May 5, 1947. James H. Duff, Attorney General for plaintiff. McNees, Wallace & Nurick of Harrisburg, for defendant. Commerce Clearing House Court Decisions Requisition No. 372874.

* The full text of this opinion is printed in the **State Tax Reporter, Pennsylvania, page 10,099.**

Appealed to the Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

DISTRICT OF COLUMBIA. Docket No. 141. *District of Columbia v. H. D. Lee Co., Inc.*, 161 F. 2d 646. (The Corporation Journal, October, 1947, page 14.) District income tax act—application of act to foreign corporation soliciting orders. **Petition for certiorari filed, June 18, 1947. Certiorari denied, October 13, 1947.**

MISSISSIPPI. Docket No. 94. *Stone v. Memphis Natural Gas Co.*, 29 So. 2d 268. (The Corporation Journal, May, 1947, page 329.) State Franchise Tax—unlicensed foreign corporation doing interstate business. **Petition for certiorari filed, May 17, 1947. Certiorari granted June 16, 1947.**

MONTANA. Docket No. 39. *Board of Railroad Commissioners v. Aero Mayflower Transit Co.*, Montana Supreme Court, September 19, 1946. (The Corporation Journal, May, 1947, page 333.) Motor carriers—contract carrier in interstate commerce—imposition of state tax upon carrier. **Appeal filed, February 10, 1947. Jurisdiction noted, March 10, 1947.**

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* Data compiled from **CCH U. S. Supreme Court Docket, 1947-1948.**

Regulations and Rulings

ARKANSAS—In calculating and additional initial or qualification fees due by reason of the employment of an increased amount of capital stock within the state, the schedule of fees in the present statute is to be applied to the increase, regardless of amounts paid under prior acts. (Opinion of the Attorney General to the Secretary of State, State Tax Reporter, Arkansas, ¶ .402.)

An out-of-state bus line which leases certain surplus busses to an Arkansas corporation to be used in Arkansas, need not be qualified in Arkansas, if it does not engage in the transportation business in Arkansas. (Opinion of the Attorney General, State Tax Reporter, Arkansas, ¶ .012.)

DISTRICT OF COLUMBIA—Regulations have been issued in connection with the new District of Columbia Income and Franchise Tax Act of 1947. (State Tax Reporter, District of Columbia, ¶¶ 13-901 et seq.)

LOUISIANA—A person who rents a dragline to a drainage district at an hourly rate but has no supervision or control over the work to be done need not qualify as a general contractor. (Opinion of the Attorney General, State Tax Reporter, Louisiana, ¶ 35-610.)

MISSOURI—A corporation filing articles of voluntary dissolution in any calendar year and thereupon ceasing to exercise its corporate privileges is not required to file a report nor pay the corporation franchise tax in the succeeding calendar year, even though the corporate existence continues into the succeeding calendar year for the purpose of winding up the corporation's business affairs. (Opinion of the Attorney General to the Chairman, State Tax Commission, State Tax Reporter, Missouri, ¶ 5-006.)

NEW MEXICO—A revision of the gross receipts tax rules and regulations has recently been made. Some of the more important additions and revisions affect agricultural implement dealers, charitable organizations, contractors, electrical and gas manufacture and sale, interstate sales, the oil and gas industry and wholesale dealers.

OHIO—The Board of Tax Appeals has ruled that accounts receivable of a foreign corporation arising from sales of property from a stock of goods maintained in Ohio have a situs for taxation in Ohio and may be included in an apportionment formula for franchise tax purposes. (State Tax Reporter, Ohio, ¶ 5-025.) The Board has also ruled that such accounts receivable of a foreign corporation arising from sales of property from a stock of goods maintained in Ohio have a business situs in Ohio and are subject to taxation. (State Tax Reporter, Ohio, ¶ 25-016.)

When it is shown that the consumer has refused to pay the sales and use taxes after demand of the Tax Commissioner, the Commissioner need not assess the taxes against the vendor but may assess them against the consumer. (Ruling, Board of Tax Appeals, State Tax Reporter, Ohio, ¶ 69-025.)

Some Important Matters for November and December

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ALASKA—Annual Corporation Tax due on or before January 1.—Domestic and Foreign Corporations.

DELAWARE—Annual Report due on or before first Tuesday in January.—Domestic Corporations.

DISTRICT OF COLUMBIA—Annual Report due between January 1 and January 20.—Domestic Corporations.

Application for license in connection with District Franchise (Income) Tax due on or before January 1.—Domestic and Foreign Corporations.

GEORGIA—Annual License Tax Report and Tax due on or before January 1.—Domestic and Foreign Corporations.

MISSOURI—Annual Franchise Tax, due on or before December 31.—Domestic and Foreign Corporations.

NEW YORK—Second installment of Franchise (Income) Tax of Business Corporations due on or before November 15 (or within 30 days after notice, if given later than October 15; payable not later than January 15, in any event).—Domestic and Foreign Business Corporations other than real estate companies.

UNITED STATES—Fourth Installment of Income Tax imposed for the calendar year 1946 due on or before December 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

Suppose the Corporation's Charter Didn't Fit! Shows how charter provisions which suit well enough at time of organization may be handicaps for the corporation in later life—some measures to avoid them that a lawyer may help his client to take.

What! *We* Need a Transfer Agent? *Nonsense!* The foregoing is the title of a pamphlet which describes in detail, with many illustrations, the exact steps through which a stock certificate goes in being transferred from one owner to another by an experienced transfer agent.

When a Corporation Is P. W. O. L. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

Contracts You Can't Enforce. Interesting case-histories which show advisability of contractor getting lawyer's advice before undertaking construction work outside his home state, even for federal government.

What Constitutes Doing Business. (Revised to June 1, 1946.) A 191-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

After the Agent for Service Is Gone. What will happen *then* if suit is brought against the company? Some examples taken from actual court cases, with full texts of the final decisions.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

Spot Stocks—and Interstate Commerce. Treats, in a general and informal way, of the relation between the carrying of goods in warehouses in outside state and the statutory obligations which that activity, in some states, places on the corporation owning the goods.

We've Always Got Along This Way. A 24-page pamphlet of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employe suddenly found themselves in trouble.

Judgment by Default. Gives the gist of Rarden v. Baker and similar cases, showing how corporations qualified as foreign in any state and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

THE CORPORATION TRUST COMPANY
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THE CORPORATION JOURNAL

The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).